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a In the Supreme Court of the State of California.

THE HIBERNIA SAVINGS AND LOAN SOCIETY, Appellant,
vs.
CITY AND COUNTY OF SAN FRANCISCO, Respondent.
} S. F., No. 2683.

Transcript on Appeal.

Tobin & Tobin, attorneys for appellant.
Franklin K. Lane, city attorney, attorney for respondent.

(Endorsed:) Filed this 9 day of Mar. A. D. 1901. Geo. W. Root, clerk, by A. E. Homlein.

[Seal Supreme Court of California.]

1 In the Supreme Court of the State of California.

Transcript on Appeal.

In the Superior Court of the State of California in and for the City and County of San Francisco.

THE HIBERNIA SAVINGS AND LOAN SOCIETY (a Corporation), Plaintiff,
vs.
THE CITY AND COUNTY OF SAN FRANCISCO, Defendant.
} No. 72434. Dept. 4.

Amended Complaint.

Now comes the plaintiff and by leave of the above named honorable court first had and obtained files this its amended complaint herein, and alleges that:

2 I.

The plaintiff is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the city and county of San Francisco, State of California.

II.

The defendant heretofore within the time limited by law caused all of the real and personal property in the said city and county of San Francisco subject to taxation for the fiscal year ending July 30, 1900, to be assessed to the owners and the reputed owners thereof, and the said assessment was regularly entered into the annual assessment book of said city and county for said year; and, in addition

thereto, there was entered in said annual assessment book and assessed to this plaintiff certain personal property not subject to taxation.

III.

The total amount of personal property assessed to plaintiff as aforesaid was of the value of two million, six hundred and one thousand, three hundred and seventy-seven ($2,601,377.00) dollars, included within which were the following items, to-wit: "Bonds," valued therein at the sum of one million, six hundred and
3 fifteen thousand ($1,615,000.00) dollars, and "solvent credits," valued at one hundred and thirty-two thousand, three hundred and seventy-five ($132,375.00) dollars.

IV.

The said item of "bonds," valued as aforesaid, was comprised solely of bonds of the Market Street Cable Railway Company, of the value of one million, one hundred and twenty-seven thousand ($1,127,000.00) dollars; bonds of the Spring Valley Water Works, of the value of two hundred and fifty-eight thousand, seven hundred and fifty ($258,750.00) dollars; bonds of the Sutter Street Railway Company, of the value of one hundred and sixty-eight thousand, seven hundred and fifty ($168,750.00) dollars, and bonds of the Powell Street Railway Company of the value of sixty thousand, five hundred ($60,500.00) dollars; amounting in all to said sum of one million, six hundred and fifteen thousand ($1,615,000.00) dollars.

V.

The said Market Street Cable Railway Company is, and at all times hereinafter mentioned was, a railroad corporation organized and existing under the laws of the State of California and having its principal place of business in said city and county of San Francisco and operating a system of street railroads in said city
4 and county, and the bonds of said Market Street Cable Railway Company owned and held by plaintiff were and are secured by mortgage or deed of trust upon all franchises and real and personal property of said Market Street Cable Railway Company, without deduction of the amount secured by any mortgage or deed of trust upon the said property, or any part thereof.

All the franchises and real and personal property of said Market Street Cable Railway Company were assessed by the assessor of the defendant at the full value, without deduction of the amount secured by any mortgage or deed of trust upon its said property, or any part thereof.

Said Spring Valley Water Works is, and at all times hereinafter mentioned was, a quasi-public corporation organized under the laws of the State of California, and having its principal place of business in said city and county of San Francisco, and engaged in the busi-

ness of supplying water to the inhabitants of said city and county, and to the municipal government of said city and county.

Said bonds so held and owned by plaintiff were and are secured by mortgage or deed of trust upon all the real and personal property of said Spring Valley Water Works, and all of the real
5 and personal property belonging to said Spring Valley Water Works was assessed by the said assessor and by the assessors of the various counties in this State in which said Spring Valley Water Works owns real estate to the full value thereof, without deduction of the amount of its bonds secured by any mortgage or deed of trust, or any part thereof.

Said Sutter Street Railway Company is, and at all times hereinafter mentioned was a railroad corporation organized under the laws of the State of California, and having its principal place of business in the city and county of San Francisco and operating a system of street railroads in said city and county, and the bonds of said Sutter Street Railway Company so held and owned by your petitioner were and are secured by mortgage or deed of trust upon all franchises and real and personal property of said Sutter Street Railway Company, without deduction of the amount secured by any mortgage or deed of trust upon its said property, or any part thereof.

All the franchises and real and personal property of said Sutter Street Railway Company were assessed by said assessor at their full value, without any deduction of the amount secured by any mortgage or deed of trust upon its said property, or any part thereof

Said Powell Street Railway Company is, and at all times
6 hereinafter mentioned was, a railroad corporation organized and existing under the laws of the State of California and having its principal place of business in said city and county of San Francisco and operating a system of street railroads in said city and county, and the bonds of said Powell Street Railway Company so owned and held by plaintiff were and are secured by mortgage or deed of trust upon all franchises and real and personal property of said Powell Street Railway Company, without deduction of the amount secured by any mortgage or deed of trust upon its said property, or any part thereof.

All the franchises and real and personal property of said Powell Street Railway Company were assessed by said assessor at their full value, without deduction of the amount secured by any mortgage or deed of trust upon its said property, or any part thereof.

VI.

The plaintiff did not make return of any of the said items referred to in paragraph IV hereof for assessment, and has never consented to such assessment.

VII.

After said assessment was made and during the period the same was under the jurisdiction and control of the board of supervisors of the defendant sitting as a county board of equalization,
7 the plaintiff presented to said board, sitting as aforesaid, its petition setting forth the facts concerning said assessment and praying that the aforesaid items and others be stricken from said assessment, which said petition was by said board denied.

VIII.

After said assessment book was received by the tax collector and the taxes for said fiscal year became payable, the plaintiff, as the owner of the aforesaid property, claimed that the assessment to the plaintiff was void in that part comprising the aforesaid and other property, and thereupon, under the provisions of section 3819 of the Political Code of California, paid to the tax collector of the defendant, and said tax collector received from plaintiff, on the 27th day of November, 1899, as a tax theretofore levied by the board of supervisors of the defendant upon property of the plaintiff and included within said assessment for said fiscal year ending July 30, 1900, the sum of forty-seven thousand, eight hundred and eighty-five and 77-100 ($47,885.77) dollars, whereof the sum of twenty-eight thousand, four hundred and eighty-two and 21-100 ($28,482.21) dollars, being the portion of said tax levied upon the property hereinbefore specified, and other property was paid under protest, which
8 said protest was in writing, and was by plaintiff delivered to, and was received by said tax collector, on said 27th day of November, 1899, and was in the words and figures following:

To Edward I. Sheehan, tax collector of the city and county of San Francisco, State of California:

The undersigned, The Hibernia Savings and Loan Society, does herewith pay you the sum of $47,885.77, being the amount claimed by you as said tax collector for city and county and State taxes for the fiscal year ending June 30th, 1900, as shown by your tax bill designated and marked "Vol. six, page 16, block 258, sub. 2."

Said society does hereby admit that the sum of $19,403.36 is due said city and county, and State, but does hereby protest against the payment of any amount in excess thereof. You are hereby notified that said society does herewith pay you the sum of $28,482.21 under protest.

The grounds of the protest of said society are the following:

I.

Of the amount herewith paid under protest the sum of $26,324.50 is a tax assessed upon the bonds of quasi-public corporations owned

by this society, and assessed at the sum of $1,615,000.00. The
9 property of said corporations upon which said bonds are based being already assessed and a tax paid thereon; the above tax and assessment against this society is illegal and void. Said assessment is contrary to the constitution and the laws of the said State of California.

II.

Of the amount herewith paid under protest the sum of $171.16 is a tax upon bonds of quasi-public corporations held by this society as security for the payment to it of money loaned. Said tax and assessment is illegal and void for the reasons designated in paragraph I hereof.

III.

Of the amount herewith paid under protest the sum of $1,986.55 is a tax upon:

(*a.*) That certain draft of the United States Treasurer drawn on the United States Treasury, No. B953,437, dated on the first day of January, 1899, for the sum of one hundred and twenty thousand ($120,000.00) dollars, the same being for interest due on said day from the United States to this claimant on the United States registered four per cent. bonds of 1907, and

(*b.*) That certain draft of the United States Treasurer drawn on the United States Treasury, No. B77,905, dated on the first day of February, 1899, for the sum of one thousand, eight hundred
10 and seventy-five ($1,875.00) dollars, the same being for interest due on the said day of February, 1899, from the United States to this claimant on United States registered three per cent. bonds of 1908.

Said tax of $1,986.55 is void under the provisions of section 3701 of the Revised Statutes of the United States, which provides that all stocks, bonds, Treasury notes and other obligations of the United States shall be exempt from taxation by State or municipal authority.

This protest is made under section 3819 of the Political Code of the State of California.

In witness whereof, the said The Hibernia Savings and Loan Society has caused this protest to be signed in its name by its secretary on this 27th day of November, 1899.

THE HIBERNIA SAVINGS AND LOAN SOCIETY,
By ROBERT J. TOBIN, Secretary.

(Endorsed:) Received and filed within protest Nov. 27, '99. E. J. Sheehan, tax collector.

IX.

Prior to said 27th day of November, 1899, and at the time fixed by law therefor, the board of supervisors of the defendant in due and